

No. 83-160

SUPREME COURT OF THE UNITED STATES

October Term 1983

BETTE T. KRALL,

Petitioner

v.

THE BETHEL PARK SCHOOL DISTRICT,

Respondent.

REPLY BRIEF OF PETITIONER

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REPLY-STATEMENT OF QUESTIONS PRESENTED

1. Did Petitioner:

(A) Present federal
questions in state court?

(B) File a timely Petition
for Allowance of Appeal
in state court?

2. Does a "community standard"
rule for termination of employment withstand
Constitutional scrutiny?

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REPLY TO RESPONDENTS COUNTER-STATEMENT

Bette T. Krall has been fired, denied her life's work, her livelihood and has been held up to ridicule within the community. Her attempt to seek this Court's help has been termed frivolous, without merit and further met with issues the effect of which would divert us from considering the Constitutional challenge involved.

Two matters require the Court's attention of a factual nature.

I. Following her dismissal on March 12, 1979 Bette T. Krall filed a timely appeal to the Secretary of Education of the Commonwealth of Pennsylvania. Paragraph 6 of her appeal raised Constitutional issues as follows:

"6. Appellant believes and avers that her discharge as a professional employee was illegal and unconstitutional and in support thereof avers as follows:

c. The hearing and adjudication violated Appellant's right to due process of law." Emphasis ours.

Respondent's contention of when federal questions were raised are just false as shown clearly by the record and as quoted above.

II. Commonwealth Court on June 3, 1982 reversed the Secretary of Education, thus firing Mrs. Krall. Following the filing of a timely Petition for Reconsideration the Court denied the same on July 28, 1982. A Petition for Allowance of Appeal was filed timely on

August 26, 1982. Pennsylvania Rules of Appellate Procedure 1113(a) requires an appeal to be made within thirty (30) days. Respondents have not read the rule.

III. The Respondent's lengthy brief is in violation of Rule 22.2 and should not have been accepted by the Clerk.

ARGUMENT

I. Were the federal questions preserved and was an appeal timely made?

Petitioners position is that the challenge to the Constitution must be raised at the earliest possible moment. See Konigsberg v. State Bar of California, 77 S. Ct. 722, 353 U.S. 252; Huddleston v. Dwyer, 64 S. Ct. 1015, 322 U. S. 232. Had Bette T. Krall not raised the Constitution in her Appeal to the Secretary of Education the right may nevertheless have been preserved since she prevailed before the Secretary. It would be arguable whether or not the appeal was preserved if it was first raised in Commonwealth Court.

Of course, her having raised the Constitution before the Secretary of Education cuts off any further debate. Respondent's argument is obviously without having familiarized it with the record. We would ask Respondent so acknowledge.

Respondent further argues that Petitioner's Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was due no later than August 9, 1982 and filed on August 26, 1982 and is thus untimely. Respondent forgets or ignores (its brief does not indicate) that Commonwealth Court was asked to reconsider and following this denial a Petition for Allowance of Appeal to the Supreme Court was filed on August 26, 1982.

If we ignore this Petition for Reconsideration filed with Commonwealth Court the Respondent's position would have merit - simply ignoring this matter does not. The Petition for Reconsideration was denied on July 28, 1982. A Petition for Allowance of Appeal was timely filed on August 26, 1982. Pennsylvania Rules of Appellate Procedure 1113(a) requires an appeal to be filed within thirty (30) days of the July 28, 1982 order.

II. Does a "community standard" rule for termination of employment stand up to the Constitution?

The "community standards" rule as being one of no law was raised in the original Petition before this Court. The Respondent has analogized the obscenity cases as being

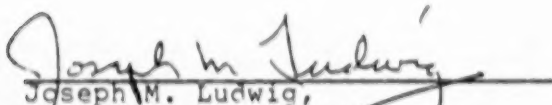
applicable. We submit that they are not; that considerations for termination of employment are vastly different; that the criteria that govern employment in schools is just not the same as that which governs porn shops. We ask this Court to grant the Writ to consider these criteria.

CONCLUSION

For the reasons herein stated and for the reasons stated in the original Petition, it is respectfully submitted that the public interest requires that the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

LUDWIG & ACHMAN


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